

## Office Action Summary

Application No.

10/826,839

Applicant(s)

GENDALL, ALEX K.

Examiner

Richale L. Haney

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

***Response to Amendment***

The amendment filed on 2/12/2007 has been considered. Claim 1 has been amended. Claims 1 and 12 are currently pending.

***Claim Objections***

1. Claim 1 is objected to because of the following informalities: applicant recites that the components respectively widthwise directly overlap the angled edges defined by the corner sections. It appears that only one component would *directly* overlap the angled edges of the corner section, since one component is applied to a first side and the second component is applied to a second side.

Furthermore, applicant recites, "major length extends" but has not clearly defined this term in the original disclosure. Applicant can be his or her own lexicographer; however, when doing so applicant must clearly and precisely define the term. The meaning of "major length extends" is not readily understood and is interpreted to mean the longest portion side of the folded corner.

The terminology added to claim 1, "one section at one side of the bandana and the other section at the opposite side of the bandana," "one substantially smaller than the other, and wherein the component respectively widthwise directly overlap major length extends of said angled edges defined by the respective corner sections, at opposite sides of the bandana" lack antecedent in the specification.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirsch et al. (US 6,247,181). The device of Hirsch et al. discloses a bandana device comprising a generally triangular (Column 5, lines 23 – 25) flexible protective fabric (Column 4, line 51) having two upper corners with opposite sides (See figure 4), each upper corner defining an upper horizontal edge (20) and a side edge extending to the upper edge (Figure 4), press-together connection components attached to the bandana at each of the said corners (61, 52) the components extending proximate to the edges (Figures 5 & 6), the components are rectangular having a first face area (52) and a second face area (61) wherein the first face area (52) is substantially greater in size than the second face area (61) and one component carries hook fastening and the other component carries loop fastening (Column 5, lines 46 –47 and 66). The bandana has two folded generally triangular upper corner sections of generally the same size forming the corners (41, 42), one section at one side of the bandana and the other section at the opposite side of the bandana and defining an angled edge forming a leg (or major length extend) of the corner section (Figure 5). The components are stitched to the respective corner sections; so that they respectively widthwise directly overlap major length extends of the angled edges at opposite sides of the bandana (Figures 5 and 6).

Each of the folded corners form four layers and stitched to the respective corner sections (Column 5, lines 33 – 36). The components are attached to the bandana by a resiliently yieldable means, whereby the pressed together components may shift position relative to the bandana corners when tensioned (Column 5, line 46). In regard to the claims 1 and 12, where the applicant recites that the bandana be worn by a rider wearing a helmet and is applied to the wearer's face so that the corners are brought together at the rear of the wearer's neck and below the lowermost edge of the helmet so the edge is above the bandana, it is noted by the examiner that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, as in the instant application, then it meets the claim (MPEP 2111.04).

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1 and 12 have been considered but are moot in view of the new ground(s) of rejection.

Applicant submits that Hirsch does not disclose a fastener overlapping a major length extent<sup>†</sup> of the angled edge beneath it, and at best extends over 40% of that edge. Applicant has not clearly defined a major length extent and when interpreted in the broadest reasonable sense Hirsch meets the recitation as claimed. Hirsch disclose a fastener overlapping at least a portion of the angled edge, which is considered a major

length extent. Applicant does not claim that the overlapping fastener must be covering more than 40% of the angled edge.

Applicant further argues that the fastener is not shown directly overlapping the angled edge at the right corner extent. The fasteners of Hirsch overlap in the same manner that is shown, and claimed, by the applicant. Applicants drawing show a first fastener is on the opposite side of angled edge and another that is applied directly to the corner section. The device of Hirsh shows an identical configuration.

Applicant states that the width of the fasteners disclosed in Hirsch are of the same size. Hirsch shows a first fastener and a second fastener (61, 62), wherein the second fastener is greater in length than the second fastener. Both of which would overlap a major length extend of the angled edge.

Applicant submits that claim 12 recites a structural relationship of parts and the prior art fails to teach the relationship of the components to a helmet and the lower edge of a helmet proximate the pressed together components. It is noted that applicant has not claimed the combination of a bandana and a helmet. Applicant's preamble claims a bandana for use by a rider wearing a helmet; the helmet has not been claimed in combination. The device of Hirsch is capable of being worn with a helmet as claimed and therefore is anticipatory. The recitation of a helmet has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are

able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Richale L Haney  
Examiner  
Art Unit 3765

RLH  
4/23/2007

  
**KATHERINE MORAN**  
**PRIMARY EXAMINER**